cargo became a total loss, and the plaintiff brought suit for the value of the cargo, on the warranty of seaworthiness in the charter-party. *Held,* that the plaintiff, whether or not technically a bailee of the cargo, could recover the amount claimed. *Pendleton v. Benner Line* (1918, U. S.) 38 Sup. Ct. 330.

Like anyone who holds himself out as a carrier, though employing a subcontractor to perform the physical transportation, the plaintiff was under a carrier's liability to the shipper. See *Buckland v. Adams Ex. Co.* (1867) 97 Mass. 124; *Transportation Co. v. Bloch Bros.* (1888) 86 Tenn. 392, 6 S. W. 881. As pointed out by Mr. Justice Holmes in the opinion, the right of a bailee to recover full damages against a third person for a wrong affecting the goods was for centuries rested on his liability over to the bailor. Whether all bailees were ever under an insurer's liability to the bailor is by no means clear; but as it became settled that the modern law imposed no such sweeping liability, the courts, after a hard struggle to make the traditional explanation of the right against third persons fit the various cases that arose, finally abandoned the attempt, resting the right squarely on present or prior possession. See *Brewster v. Warner* (1883) 136 Mass. 57; *The Winkfeld* [1902] P. 42; see also Holmes, *Common Law,* 164 *et seq.;* 2 Pollock & Maitland, *History of Eng. Law* (2d ed.) 170 *et. seq.;* Bordwell, *Property in Chattels* (1916) 29 HARV. L. REV. 731. But the traditional explanation failed, not because liability over was not a sufficient basis for recovery, but because, in the case of the ordinary bailee, it was too often lacking. In the principal case, it was the element of present or prior possession that was lacking, or at least doubtful. But liability over being in fact present, both theory and precedent justify the court in allowing recovery under the old theory. It is interesting that the opinion should have been written by Mr. Justice Holmes, who perhaps did more than anyone else to expose the fallacy of the old reasoning as applied to bailees in general.

CONFLICT OF LAWS — NEGOTIABLE INSTRUMENTS — APPLICATION OF RENVOI DOCTRINE.—Cotton brokers in Liverpool agreed to buy cotton from a firm in Alabama, and to accept drafts for the purchase price. In pretended compliance with this contract the Alabama firm drew a draft on the purchasers' bank in Liverpool, to which was attached a forged bill of lading for cotton, but no cotton in fact was shipped. The draft with bill of lading attached was purchased in good faith by the Guaranty Trust Co. of New York, which presented it to the purchasers' bank in Liverpool for acceptance, and it was duly accepted for account of the purchasers. The Guaranty Trust Co. then sold the accepted draft in England, and it was later paid by the acceptors to the ultimate holder, a London bank. On discovering the facts, the acceptors brought action against the Guaranty Trust Co. in the United States District Court for the Southern District of New York to recover back the amount paid. The case turned on whether certain words in the draft referring to the contract for cotton made it a mere conditional order as distinguished from a negotiable bill of exchange. The District Court, applying American law, gave judgment for the acceptors, which was reversed by the Circuit Court of Appeals in a decision reported in (1913) 210 Fed. 810, on the ground that the question of negotiability as against the English acceptors was governed by English law, and that evidence of that law was disregarded by the trial court. Pending a new trial in the District Court, the Guaranty Trust Co. brought suit against the acceptors in the King's Bench Division in England to obtain a declaratory judgment determining what the English law was on the question at issue. *Held,* that the American decision was binding on the parties in England to the extent of deciding that English law governed, that the plaintiff in the English court was entitled to a declara-

tion of the English law, that under the English law of Bills and Notes, the acceptors would not be entitled to recover back what they had paid, but that under the Conflict of Laws provision of the English Bills of Exchange Act, English law "threw the parties back upon American law," and that under American Bills and Notes law the acceptors would be entitled to recover. *Guaranty Trust Co. of New York v. Hannay & Co.* [1918] 1 K. B. 43.

See COMMENTS, p. 1046.

CONFLICT OF LAWS—CAUSE OF ACTION ARISING IN A FOREIGN JURISDICTION—EFFECT OF FOREIGN STATUTE OF LIMITATIONS.—The plaintiff was owner of a trestle bridge spanning a stream which was an international boundary. The defendant's locomotive in Canada set fire to the bridge which was burned and destroyed The Canadian statute applicable to the facts provided that suit for such an injury "shall be commenced within one year and not afterwards." Over five years had elapsed before the commencement of this action in New Hampshire. *Held*, that the Canadian statute of limitations was not a bar to the action. *Connecticut Valley Lumber Co. v. Maine Cent. R. R. Co.* (1918, N. H.) 103 Atl. 263.

The general Anglo-American view is that questions of limitation touch the remedy and as such are to be determined by the *lex fori*. *Huber v. Steiner* (1835, C. P.) 2 Bing. N. C. 202. It follows that an action may be brought on a contract or tort at any time before the remedy is barred by the local statute of the forum, although action has already been barred by the *lex loci contractus* or *solutionis* or *lex loci delicti*. *Harris v. Quine* (1869) L. R. 4 Q. B. 653; *Townsend v. Jemison* (1850, U. S.) 9 How. 407. The rule is also applied to a judgment obtained in a foreign jurisdiction. *Fanton v. Middlebrook* (1882) 50 Conn. 44. Nor does it violate the full faith and credit clause to deny enforcement because the statute of the forum has run, although the judgment would still be enforceable in the state where rendered. *McElmoyle v. Cohen* (1839, U. S.) 13 Pet. 312. Upon the Continent, however, the time limit on the enforcibility of an obligation is held a part of the obligation and hence determined by the law of the obligation. Guthrie, *Savigny*, 221. In the United States a distinction has been made, based upon the residence of the parties, which has presented an opportunity for approaching the Continental rule. Where the statute of the state whose law governs the obligation is clearly expressed as extinguishing the obligation, and both the parties have resided in that state during the whole period of the statute, the law of that state has been applied in suits brought elsewhere. *Brown v. Parker* (1871) 28 Wis. 21; *Perkins v. Guy* (1877) 55 Miss. 153, 177; Story, *Conflict of Laws* (8th ed.) sec. 582. This appears to be an over-refinement; if the statute purporting to "extinguish" the obligation does extinguish it, the matter ceases to be one of procedure, and residence would become immaterial; whereas if such words do not extinguish the obligation there seems little reason for the exception based on residence. Where a right not existing at common law has been given by statute, and its duration limited, the forum has very generally denied a remedy after the expiration of that period, and this regardless of residence. *Eastwood v. Kennedy* (1876) 44 Md. 563. The same tendency to approach the Continental view is indicated by state statutes expressly barring actions upon obligations which have been barred in the jurisdictions where they arose. See *Holmes v. Hengen* (1903, Sup. Ct.) 85 N. Y. Supp. 35. But upon the general proposition that limitation is a matter of remedy the courts have been consistent in their reasoning; many even of the preliminary questions, bearing on the ultimate question whether the action is barred, are also determined by the *lex fori*. *Obear v. First Nat. Bank* (1895) 97 Ga. 587, 25 S. E. 335 (provision